

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	In Proceedings
)	Under Chapter 7
KELLEBREW TRANSPORTATION)	
SERVICES, INC.,)	No. BK 90-50510
)	
Debtor(s).)	

OPINION

On August 28, 1991, this Court granted General Transport Services, Inc.'s ("GTS") request for an administrative expense in the amount of \$65,238.00. The Court, however, reserved ruling on the question of whether GTS should be entitled to satisfy its claim from the funds in a bank account at Mark Twain Bank totaling \$28,750.59. The Trustee objected to the request by GTS that it be paid, in part, from those funds, arguing (1) that the funds in the account were generated by the debtor post-petition, and that pursuant to the terms of the Operating Agreement entered into by debtor and GTS, debtor has not yet been paid in full; and (2) that the bank account is joint and requires the dual signatures of debtor and GTS to withdraw funds.

On February 20, 1992, the Court held a hearing to resolve the question of whether GTS is entitled to the funds in the bank account. After testimony was heard and evidence presented, the Court ruled that, under the terms of the Operating Agreement, debtor had been paid in full. The Court further ordered that GTS supply the Court with a copy of the account card at Mark Twain Bank. On March 9, 1992, GTS submitted the following documents:

(1) Resolution of GTS's Board of Directors regarding authorized

signatories to the account at Mark Twain Bank, dated June 21, 1989; (2) Depositor's Contract, dated June 21, 1989; (3) Resolution of GTS's Board of Directors regarding authorized signatories to the account, dated November 16, 1990; and (4) Depositor's Contract, dated November 16, 1990. These documents clearly establish that the account at Mark Twain Bank is in the name of GTS only, and that the account was not set up as a joint account.¹ While the resolution of GTS's Board of Directors and the Depositor's Contract dated June 21, 1989 provide that checks drawn on the account are to be signed by an officer of debtor and an officer of GTS, that alone fails to establish the existence of a joint account.² In view of the fact that the account is not joint and is solely in the name of GTS, and in light of the Court's previous ruling that debtor has been paid in full under the terms of the Operating Agreement, the Court finds that GTS is entitled to the funds in the account at Mark Twain Bank, and is entitled to satisfy, in part, its administrative claim for \$65,238.00 from those funds.

Accordingly, for the reasons stated, the request for payment of administrative expenses, filed by GTS on March 20, 1991, is GRANTED in its entirety.

¹Similarly, the account statements previously submitted by the parties are in the name of, and are addressed to, General Transport Services.

²The later resolution of the Board of Directors dated November 16, 1990, as well as the Depositor's Contract dated November 16, 1990 (after debtor ceased doing business and after the bankruptcy case was converted from a chapter 11 to a chapter 7) do not require and/or authorize debtor's officers to sign checks.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: March 19, 1992